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495 Seaport Court, Suite 101  
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Commissioner of Patents  
Attn: Examiner Jordan M. Lofdahl  
Art Group 3644  
P.O. Box 1450  
Arlington, VA 22313



October 4th, 2004

Re: Office Action with Restriction Requirement for Patent Application for  
"AN ALTERNATIVE EFFICIENT MILKING METHOD"  
S/N 10/706,699  
Carl Muirbrook., Inventor

Dear Examiner Lofdahl:

On this date I am sending by Express Mail the Response to the Office Action with Restriction Election on the above application.

I hereby authorize use of my deposit account, 500705, with User ID FINA, to cover all necessary fees and costs for this application.

Sincerely Yours:

A handwritten signature in cursive script, appearing to read "George S. Cole".

George S. Cole, Esq.  
PTO #40,563



In Re Application Of: Carl T. Muirbrook  
Serial No. 10/706,699  
Filed: 11/12/2003  
For: An Alternative Eff....

Examiner: Jordan M. Lofdahl  
Group Art Unit: 3644  
Date: Oct. 4th, 2004

THE COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

SIR: Transmitted herewith are:

☒ an election restriction as requested by the Examiner.

☒ Extension of time as necessary is requested, and authority to charge against deposit account 50-0705 is herewith granted.

☐ Payment for the three-month extension period.

☒ The Commissioner is herewith authorized to charge payment of the necessary fees, or credit any overpayment to Deposit Account 50-0705 associated with this communication for any related purpose, including: ( A DUPLICATE COPY OF THIS SHEET IS ENCLOSED)

☒ Any additional filing fees required for presentation of extra claims

☒ Any extension or petition fees.

☒ Small entity status for this application under 37 CFR §1.9 and 1.27 has been established by a verified statement previously submitted.

Respectfully Submitted:

George S. Cole, Esq.  
PTO #40,563

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### **RESPONSE TO OFFICE ACTION**

This is in response to the Office Action for Restriction dated 04/20/2004.

### **CLAIMS RESTRICTION**

The Examiner asserted that two distinct species of the claimed invention were disclosed (Species A, 'preparing teat' and Species B, 'feeder tube'). Applicant is puzzled, however, as to the Examiner's assertion of separateness of species for the following reason.

The principle difference between the species appears to be absence or presence of a delay between preparing a teat and applying a feeder tube. As some delay, intentional or unintentional – even if it be that imposed solely by the limitations of human reaction and action time – cannot be eliminated, the addition of extra delay is necessarily but an additional, not an alternative, step, and thus constitutes not a separate species but a more constrained and thus dependent claim. Pursuant to MPEP §806.03, this should not be subject to restriction, as these claims 'are but different definitions of the same disclosed subject matter', varying only its breadth or scope of definition.

However, as the Examiner has carefully pointed out, even if the objection as to speciation is traversed, an identification of an elected species is mandatory. Accordingly, for the first species, Applicant provisionally elects the species A, "preparing teat".

Furthermore, the Examiner's assertion that there is a sub-species differentiation between the use of a sanitizing sprayer, and a dip cup, is accepted, and Applicant elects the restriction to subspecies 2A.

This election, therefore, combining Species A and subspecies 2A, is disclosed in figures 1a-1c and 3. This election of species includes claims 2 and 4.

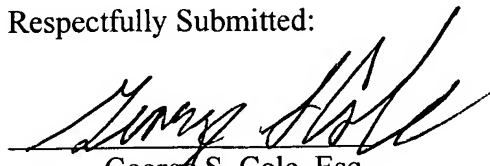
The Applicant wishes to note that his confusion was in part due to an absence of any statement of the facts relied on by the Examiner for his conclusion, contrary to the suggested practice in MPEP §808.01, and the requirement of a statement of reasons found in MPEP §816. If the Examiner insists upon restriction, the Applicant respectfully requests that the Examiner include a statement pursuant to MPEP §808.02 indicating his reasons for insisting upon the restriction, as the Applicant is not as familiar as the Examiner is presumed to be with the Patent Office's classifications and fields; Applicant's familiarity with fields, is more of those having grass and cattle.

For all of the above grounds and reasons the Examiner is respectfully requested to reverse his restriction and examine the claims.

If the Examiner has any questions or wishes to discuss this matter he is urged to telephone the Applicant's attorney, George S. Cole, Esq., at (650) 556-9510; or may direct an e-mail communication to the same individual via the e-mail address of [GSCdLawyer@aol.com](mailto:GSCdLawyer@aol.com).

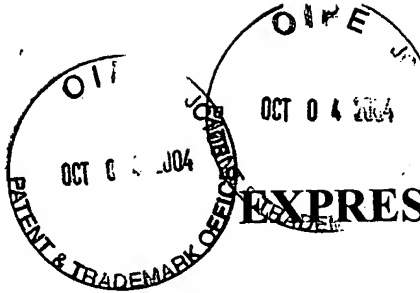
The Applicant believes that these claims are now all in presently allowable, correct, and proper form, and respectfully asks that the Examiner proceed to allow the application.

Respectfully Submitted:



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## EXPRESS MAIL CERTIFICATE

"Express Mail" mailing label No: \_\_\_\_\_ER727597572 US\_\_\_\_\_

Date of Deposit: \_\_\_\_\_OCT. 4<sup>TH</sup>, 2004\_\_\_\_\_

I hereby certify that the following documents:

- 
- attorney's cover letter;
  - Office Action mailed;
  - 2 copies transmittal cover, with:
    - petition for extension of time, and
    - payment (Deposit Account Authorization);
  - Response to First Office Action
    - with election;
  - claims listing, with:
    - complete listing of all claims

and,

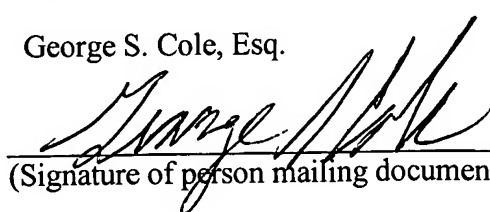
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**Commissioner for Patents**  
**P.O. Box 1450**  
**Alexandria, VA 22313-1450.**

George S. Cole, Esq.

  
(Signature of person mailing documents)

George S. Cole, Esq.  
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